

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1092

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-2.5-4-6, AS ADDED BY P.L.175-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6. (a) A licensee under this chapter may not continue to:

- (1) act as a loan broker, principal manager, or mortgage loan originator; or
- (2) operate as a branch office;

unless the licensee annually renews the license.

(b) A licensee under this chapter shall renew the license by:

- (1) filing with the commissioner, ~~at least thirty (30) days~~ before the date on which the license expires, an application containing any information the commissioner requires to indicate any material change from the information contained in the applicant's original application or any previous application; and
- (2) including, with the filing under subdivision (1), the applicable application fee specified in this chapter.

SECTION 2. IC 23-2.5-5-2, AS ADDED BY P.L.175-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. A loan processing company notice filing must be made on a form prescribed by the commissioner and include all of the following:

HEA 1092 — Concur



- (1) The loan processing company's business name, address, and state of incorporation or business registration.
- (2) The names of the owners, officers, members, or partners who control the loan processing company.
- (3) The name of each individual who is employed by the loan processing company, including the ~~mortgage loan originator license number~~ **unique identifier from the Nationwide Multistate Licensing System** of each loan processor.
- (4) The name and license number of each loan broker who:
 - (A) is licensed or required to be licensed under this article; and
 - (B) engaged the loan processing company to perform loan processing activities during the preceding calendar year.
- (5) An attestation stating that each loan processor employed by the loan processing company ~~maintains~~ **has completed the education and examination requirements of** a mortgage loan originator license under this article.
- (6) Consent to service of process as described in section 7 of this chapter.
- (7) An application fee of twenty-five dollars (\$25).

SECTION 3. IC 23-2.5-5-3, AS ADDED BY P.L.175-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) A loan processing company notice filing described in section 2 of this chapter:

- (1) expires on December 31 of each year; and
 - (2) must be refiled annually.
- (b) A loan processing company shall update and renew the loan processing company's notice filing ~~at least thirty (30) days~~ before the date on which the loan processing company notice filing expires by resubmitting the information and fee set forth in section 2 of this chapter.
- (c) A loan processing company that engages in loan processing activities without filing or renewing a loan processing company notice filing as required by this chapter violates this article.

SECTION 4. IC 23-2.5-8-1, AS ADDED BY P.L.175-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) A contract for the services of a loan broker is not enforceable unless the contract is in writing and signed by each of the contracting parties.

- (b) At the time a contract for the services of a loan broker is signed, the loan broker shall provide ~~a copy of the signed contract~~ **the following** to each party to the contract:



(1) A copy of the signed contract.

(2) A written disclosure of any agreement entered into by the loan broker to procure loans exclusively from one (1) lender.

(c) A contract for the services of a loan broker must include the following statement:

"No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing."

(d) This section does not apply to a contract that provides for the payment of referral fees by a lender or a third party.

SECTION 5. IC 23-19-1-2, AS AMENDED BY P.L.106-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. In this article, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. However, a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this article.

(2) "Bank" means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency under Section 1 of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this article; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C).

(3) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;



- (B) an issuer;
 - (C) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));
 - (D) an international banking institution; or
 - (E) a person excluded by rule adopted or order issued under this article.
- (4) "Commissioner" means the securities commissioner appointed under IC 23-19-6-1(a).
- (5) "Depository institution" means:
- (A) a bank; or
 - (B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:
 - (i) an insurance company or other organization primarily engaged in the business of insurance;
 - (ii) a Morris Plan bank; or
 - (iii) an industrial loan company that is not an insured depository institution as defined in Section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or any successor federal statute.
- (6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.
- (7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted under that provision.
- (8) "Filing" means the receipt under this article of a record by the commissioner or a designee of the commissioner.
- (9) "Fraud", "fraudulent", "deceit", and "defraud" mean a



misrepresentation of a material fact, a promise, representation, or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of the terms as applied by or defined in courts of law or equity. The terms are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal, dividends, and interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of ten million dollars



(\$10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in clause (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars (\$10,000,000);

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars (\$10,000,000);

(K) a private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars (\$10,000,000);

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer", as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);

(N) a "major U.S. institutional investor", as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars (\$10,000,000) not organized for the specific purpose of evading this article; or

(P) any other person specified by rule adopted or order issued under this article.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and



whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

- (A) an investment adviser representative;
- (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;
- (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
- (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (E) a federal covered investment adviser;
- (F) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution;
- (G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or
- (H) any other person excluded by rule adopted or order issued under this article.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, ~~receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice,~~ or supervises employees who perform any of the foregoing. The



term does not include an individual who:

- (A) performs only clerical or ministerial acts;
- (B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state, as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a), and is:
 - (i) an "investment adviser representative", as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or
 - (ii) not a "supervised person", as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(25)); or
- (D) is excluded by rule adopted or order issued under this article.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

- (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager under the trust or other agreement or instrument under which the security is issued.
- (B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
- (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit



of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means IC 23-2-1 (before its repeal).

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and



"offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or another specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the



investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) "Third party solicitor" means a person that, for compensation, directly or indirectly, solicits a client for or refers a client to an investment adviser, a federal covered investment adviser, or an investment adviser representative.

The term does not include the following:

(A) An employee subject to the supervision and control of an investment adviser registered under IC 23-19-4-3.

(B) A "supervised person", as defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(25)).

(C) A partner, officer, director, or employee of a person that controls, is controlled by, or is under common control with an investment adviser or a federal covered investment adviser.

(D) An individual excluded by a rule adopted or order issued under this article.

~~(31)~~ **(32) "State"** means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(32)~~ **(33) "Accredited investor"** has the meaning set forth in 17 CFR 230.501(a).



SECTION 6. IC 23-19-4-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 13. (a) For purposes of this section, "adviser" refers to any of the following:**

- (1) An investment adviser.
- (2) A federal covered investment adviser.
- (3) An investment adviser representative.

(b) A third party solicitor shall provide a copy of the third party solicitor's written disclosure document to a client at the time a solicitation is made.

(c) A third party solicitor's written disclosure document must include the following:

- (1) The names of the third party solicitor and the adviser who have entered into an agreement for solicitation services.
- (2) The nature of the relationship between the third party solicitor and the adviser, including any affiliation.
- (3) A statement that the adviser will compensate the third party solicitor for solicitation services.
- (4) A statement that the adviser will charge the client for:
 - (A) the solicitation services; and
 - (B) the adviser's fee.
- (5) The amount of any difference in the adviser's fee if:
 - (A) the client is charged an adviser's fee that is greater than the adviser's fee charged to other clients; and
 - (B) the difference is attributable to the third party solicitor and the adviser's arrangement for solicitation services.

(d) Except as provided in subsection (e), an adviser who is employed by or associated with an investment adviser shall not, directly or indirectly, compensate a third party solicitor for solicitation services performed in Indiana.

(e) An adviser may compensate a third party solicitor for solicitation services performed in Indiana if all of the following apply:

- (1) The adviser is properly registered with the division or exempted from registration under this article.
- (2) The adviser receives from the client, before entering into an investment advisory contract, a signed and dated acknowledgment that the client received:
 - (A) a Form ADV Part II, or any successor brochure form required to be filed under:
 - (i) 17 CFR 203-1(a); or
 - (ii) rules promulgated under this article; or



a written disclosure statement including all the information required by a Form ADV Part II; and

(B) the third party solicitor's written disclosure document.

(3) The adviser makes a good faith effort to ascertain whether the third party solicitor complies with the written agreement.

(4) The adviser has a reasonable basis for believing that the third party solicitor has complied with the written agreement.

(5) The third party solicitor is compensated under a written agreement that the adviser is a party to.

(6) The third party solicitor is not the subject of an order listed by IC 23-19-4-12(d)(5).

(7) The adviser and the third party solicitor have entered into a written agreement that:

(A) describes the third party solicitor's:

(i) services on behalf of the adviser; and

(ii) compensation for the services;

(B) contains the third party solicitor's agreement to perform the third party solicitor's duties consistent with:

(i) the adviser's instructions; and

(ii) this article; and

(C) requires the third party solicitor, when performing solicitation services described in the agreement, to provide the client with:

(i) a current copy of the adviser's Form ADV Part II, or any successor form; and

(ii) a copy of the third party solicitor's written disclosure document.

(f) This section does not relieve an adviser of any fiduciary or other obligations under any law.

SECTION 7. IC 23-19-5-8, AS AMENDED BY P.L.168-2014, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 8. (a) A person who knowingly violates this article, or a rule adopted under this article, ~~except sections 4 and 11 of this chapter or the notice filing requirements of IC 23-19-3-2 or IC 23-19-4-5;~~ commits a Level 5 felony. **However, this subsection does not apply to a violation of the following:**

(1) The notice filing requirements of IC 23-19-3-2 or IC 23-19-4-5.

(2) IC 23-19-4-13.

(3) Sections 4 and 11 of this chapter.

(b) A person who knowingly violates section 1 of this chapter commits a Level 4 felony if the person harmed, defrauded, misled, or



deceived by the violation is at least sixty (60) years of age.

(c) A person who knowingly violates section 1 of this chapter:

- (1) while using or taking advantage of; or
- (2) in connection with;

a relationship that is based on religious affiliation or worship commits a Level 4 felony.

(d) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this article. If the commissioner determines that an action based on the securities division's investigations is meritorious:

- (1) the commissioner or a designee empowered by the commissioner shall refer the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;
- (2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;
- (3) a prosecuting attorney to whom facts concerning fraud are referred under subdivision (1) may refer the matter to the attorney general;
- (4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:
 - (A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and
 - (B) prosecute the alleged offense; and
- (5) if a matter has been referred to the attorney general under subdivision (3), the commissioner and the securities division shall assist the attorney general in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy attorney general appointed by the attorney general.

(e) This article does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

SECTION 8. IC 23-19-6-10, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 10. (a) IC 23-19-3-1, IC 23-19-3-2, IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not

HEA 1092 — Concur



apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in Indiana or the offer to purchase or the purchase is made and accepted in Indiana.

(b) IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in Indiana or the offer to sell or the sale is made and accepted in Indiana.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in Indiana, whether or not either party is then present in Indiana, if the offer:

- (1) originates from within Indiana;
- (2) is directed by the offeror to a place in Indiana and received at the place to which it is directed; or
- (3) is directed by the offeror to a resident of Indiana.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in Indiana, whether or not either party is then present in Indiana, if the acceptance:

- (1) is communicated to the offeror in Indiana and the offeree reasonably believes the offeror to be present in Indiana and the acceptance is received at the place in Indiana to which it is directed or to another place in Indiana; and
- (2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in Indiana when a publisher circulates, or there is circulated on the publisher's behalf, in Indiana a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in Indiana, or that is published in Indiana but has had more than two-thirds (2/3) of its circulation outside Indiana during the previous twelve (12) months, or when a radio or television program or other electronic communication originating outside Indiana is received in Indiana. A radio or television program or other electronic communication is considered as having originated in Indiana if either the broadcast studio or the originating source of transmission is located in Indiana, unless:

- (1) the program or communication is syndicated and distributed from outside Indiana for redistribution to the general public in Indiana;
- (2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside Indiana for redistribution to the general



public in Indiana;

(3) the program or communication is an electronic communication that originates outside Indiana and is captured for redistribution to the general public in Indiana by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in Indiana, but which is not intended for distribution to the general public in Indiana.

(f) IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-4-5(a), **IC 23-19-4-13**, IC 23-19-5-2, IC 23-19-5-5, and IC 23-19-5-6 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

SECTION 9. IC 24-4.4-1-202.5, AS AMENDED BY P.L.175-2019, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 202.5. (1) If a person licensed or required to be licensed by the department to engage in mortgage transactions also engages in activities of a loan broker described in IC 23-2.5, the activities of a loan broker are subject to the following sections of the Indiana Code and any rules adopted to implement these sections:

- (a) IC 23-2.5-8-1, **except for IC 23-2.5-8-1(b)(2)**.
- (b) IC 23-2.5-8-2.
- (c) IC 23-2.5-11-15(b) and IC 23-2.5-11-15(c).
- (d) IC 23-2.5-11-17.
- (e) IC 23-2.5-8-3.
- (f) IC 23-2.5-8-4 through IC 23-2.5-8-9.
- (g) IC 23-2.5-8-10.
- (h) IC 23-2.5-10-1.
- (i) IC 23-2.5-9-1, except for IC 23-2.5-9-1(2)(B).
- (j) IC 23-2.5-11-16.

(2) Loan broker business transactions engaged in by persons licensed or required to be licensed by the department to engage in mortgage transactions are subject to examination by the department and to the examination fees described in IC 24-4.4-2-402(8)(c). The department may cooperate with the securities division of the office of the secretary of state in the department's examination of loan broker business transactions and may use the securities division's examiners to conduct examinations.

SECTION 10. IC 24-4.5-3-501.5, AS AMENDED BY P.L.175-2019, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 501.5. (1) If a person licensed or



required to be licensed under section 502.1 of this chapter also engages in activities of a loan broker described in IC 23-2.5, the activities of a loan broker are subject to the following sections of the Indiana Code and any rules adopted to implement these sections:

- (a) IC 23-2.5-8-1, **except for IC 23-2.5-8-1(b)(2)**.
- (b) IC 23-2.5-8-2.
- (c) IC 23-2.5-11-15(b) and IC 23-2.5-11-15(c).
- (d) IC 23-2.5-11-17.
- (e) IC 23-2.5-8-3.
- (f) IC 23-2.5-8-4 through IC 23-2.5-8-9.
- (g) IC 23-2.5-8-10.
- (h) IC 23-2.5-10-1.
- (i) IC 23-2.5-9-1, **except for IC 23-2.5-9-1(2)(B)**.
- (j) IC 23-2.5-11-16.

(2) Loan broker business transactions engaged in by persons licensed or required to be licensed under section 502.1 of this chapter are subject to examination by the department and to the examination fees described in section 503(8)(b) of this chapter. The department may cooperate with the securities division of the office of the secretary of state in the department's examination of loan broker business transactions and may use the securities division's examiners to conduct examinations.

SECTION 11. IC 26-1-9.1-502, AS AMENDED BY P.L.54-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in IC 26-1-9.1-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed in the real property records;
- (3) provide a description of the real property to which the collateral is related that is sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.



(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) the record indicates the goods or accounts that it covers;
- (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) the record satisfies the requirements for a financing statement in this section, but:
 - (A) the record need not indicate that it is to be filed in the real property records; and
 - (B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom IC 26-1-9.1-503(a)(4) applies; and
- (4) the record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(e) To the extent that IC 36-2-11-15 applies to require the identification of the preparer of a financing statement, the failure of the financing statement to identify the preparer does not affect the sufficiency of the financing statement.

(f) This subsection does not apply to a financing statement described in IC 26-1-9.1-706. Not later than thirty (30) days after the date the financing statement is filed, the secured party that files the financing statement shall furnish a copy of the financing statement to the debtor. The secured party has the burden of establishing compliance with this subsection. The failure of the secured party to comply with this subsection does not affect the sufficiency or effectiveness of the financing statement. A person who fails to comply with this subsection is subject to IC 26-1-9.1-625.

SECTION 12. IC 26-1-9.1-625 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 625. (a) If it is established that a secured party is not proceeding in accordance with IC 26-1-9.1, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with IC 26-1-9.1. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of,



alternative financing.

(c) Except as otherwise provided in IC 26-1-9.1-628:

- (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and
- (2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with IC 26-1-9.1-601 through IC 26-1-9.1-628 may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) A debtor whose deficiency is eliminated under IC 26-1-9.1-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under IC 26-1-9.1-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of IC 26-1-9.1-601 through IC 26-1-9.1-628 relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:

- (1) fails to comply with IC 26-1-9.1-208;
- (2) fails to comply with IC 26-1-9.1-209;
- (3) files a record that the person is not entitled to file under IC 26-1-9.1-509(a);
- (4) fails to cause the secured party of record to file or send a termination statement as required by IC 26-1-9.1-513(a) or IC 26-1-9.1-513(c);
- (5) fails to comply with IC 26-1-9.1-616(b)(1) and whose failure is part of a pattern or consistent with a practice, of noncompliance; **or**
- (6) fails to comply with IC 26-1-9.1-616(b)(2). **or**
- ~~(7) fails to comply with IC 26-1-9.1-502(f).~~

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under IC 26-1-9.1-210. A recipient of a request under IC 26-1-9.1-210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the



meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under IC 26-1-9.1-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1092 — Concur

